

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JAN 18 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

)  
Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations. )  
(Cal-Nev-Ari, Nevada) )

MM Docket No. 93-279  
RM-8368

To: Chief, Allocations Branch  
Audio Services Division  
Mass Media Bureau

REPLY COMMENTS OF RICHARD W. MYERS

1. These Reply Comments are filed by Richard W. Myers, the Petitioner in RM-8368, who initiated this proceeding. Mr. Myers filed initial comments on January 3, 1994, reiterating his support for the proposed allotment of Channel 285A to Cal-Nev-Ari and making the required commitment to apply for and construct a station on that channel if authorized to do so by the Commission.

2. Neither Mr. Myers nor his counsel have been served with comments filed by any other party except for a favorable comment by Senator Harry Reid of Nevada. No comments by other parties have been found in the Commission's Public Reference Room. Accordingly, the proposed allotment is unopposed.<sup>1/</sup>

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<sup>1/</sup> Mr. Myers' Comments recognized and addressed the pending petition by Rock "N" Roll, Inc. to allot Channel 286C2 to Boulder City, NV, File No. RM-8385. Additional support, beyond the discussion in Mr. Myers' initial comments, for denying the Rock "N" Roll petition is found in Arizona City, AZ, 4 FCC Rcd. 5711 (MM Bur. 1989), where reconsideration of an allotment based on claimed "real world interference" was denied. Any further comment with regard to the Rock "N" Roll petition will be made on January 26, 1994, the deadline established in the Commission's public notice of January 11, 1994.

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3. Thus there remains for disposition only the question of whether or not Cal-Nev-Ari qualifies as a "community" for allotment purposes. Both Mr. Myers' petition for rule making and his initial comments addressed this issue in detail. Persuasive evidence of the cohesiveness and identity of Cal-Nev-Ari as a community has been presented, through documents from the community, a report from two expert sociologists who personally visited and studied the community, and a letter from an elected United States Senator who represents the community in Congress. Based on this evidence, Mr. Myers respectfully submits that a positive finding that Cal-Nev-Ari is a viable community is compelled.

4. Finally, because the Commission relies heavily on designation by the U.S. Census as a "Census Designated Place" in FM allotment cases, Mr. Myers wishes to call the Commission's attention to the definition of a CDP by the Census Bureau, attached hereto as Exhibit 1. To be a CDP in the 1990 Census, a place must have a population of at least 1,000 persons. That is a substantial number and has not been a minimum requirement in past Commission decisions.<sup>2/</sup> If the Commission requires CDP status or political incorporation to justify an allotment, it

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<sup>2/</sup> For example, Channel 237A was allotted to Washburn, MO, population 233, in BC Docket No. 80-177 (Mar. 1981). Channel 224C3 was reallocated to Kindred, ND, population 569, in Kindred and Oakes, ND, 7 FCC Rcd 1996 (MM Bur. 1992), without any discussion of whether Kindred was incorporated or a CDP. While Kindred may have had more community institutions than Cal-Nev-Ari, they clearly served a greater area than just Kindred, because there were 500 students in the local school in a community with a total population of only 569 persons.

will in effect have made a determination that no unincorporated community of fewer than 1,000 persons merits an allotment. Mr. Myers submits that such a blanket decision would be arbitrary and irrational, and thus unlawful; and it would be so if applied to the circumstances present in Cal-Nev-Ari, which stands geographically alone and is not part of any other nearby political entity or CDP.

5. In light of the foregoing, Mr. Myers submits that the Commission should allot Channel 285A to Cal-Nev-Ari, as proposed in the Notice of Proposed Rule Making.

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January 18, 1994

Respectfully submitted,

  
Peter Tannenwald

Counsel for Richard W. Myers

metropolitan and nonmetropolitan areas. In the other hierarchies; for example, there is generally both urban and rural territory within both metropolitan and nonmetropolitan areas.

To meet the needs of various users, the standards provide for a flexible structure of metropolitan definitions that classify an MA either as a metropolitan statistical area (MSA) or as a consolidated metropolitan statistical area (CMSA) that is divided into primary metropolitan statistical areas (PMSA's). Documentation of the MA standards and how they are applied is available from the Secretary, Federal Executive Committee on Metropolitan Areas, Population Division, U.S. Bureau of the Census, Washington, DC 20233.

### **Central City**

In each MSA and CMSA, the largest place and, in some cases, additional places are designated as "central cities" under the official standards. A few PMSA's do not have central cities. The largest central city and, in some cases, up to two additional central cities are included in the title of the MA; there also are central cities that are not included in an MA title. An MA central city does not include any part of that city that extends outside the MA boundary.

### **Consolidated and Primary Metropolitan Statistical Area (CMSA and PMSA)**

If an area that qualifies as an MA has more than one million persons, primary metropolitan statistical areas (PMSA's) may be defined within it. PMSA's consist of a large urbanized county or cluster of counties that demonstrates very strong internal economic and social links, in addition to close ties to other portions of the larger area. When PMSA's are established, the larger area of which they are component parts is designated a consolidated metropolitan statistical area (CMSA).

### **Metropolitan Statistical Area (MSA)**

Metropolitan statistical areas (MSA's) are relatively free-standing MA's and are not closely associated with other MA's. These areas typically are surrounded by nonmetropolitan counties.

### **Metropolitan Area Title and Code**

The title of an MSA contains the name of its largest central city and up to two additional city names, provided that the additional places meet specified levels of population, employment, and commuting. Generally, a city with a population of 250,000 or more is in the title, regardless of other criteria.

The title of a PMSA may contain up to three place names, as determined above, or up to three county names, sequenced in order of population. A CMSA title also may include up to three names, the first of which generally is

name may be the first city or county name in the most populous remaining PMSA; the third name may be the first city or county name in the next most populous PMSA. A regional designation may be substituted for the second and/or third names in a CMSA title if such a designation is supported by local opinion and is deemed to be unambiguous and suitable by the Office of Management and Budget.

The titles for all MA's also contain the name of each State in which the area is located. Each metropolitan area is assigned a four-digit FIPS code, in alphabetical order nationwide. If the fourth digit of the code is a "2," it identifies a CMSA. Additionally, there is a separate set of two-digit codes for CMSA's, also assigned alphabetically.

## **OUTLYING AREAS OF THE UNITED STATES**

The Census Bureau treats the outlying areas as the statistical equivalents of States for the 1990 census. The outlying areas are American Samoa, Guam, the Commonwealth of the Northern Mariana Islands (Northern Mariana Islands), Republic of Palau (Palau), Puerto Rico, and the Virgin Islands of the United States (Virgin Islands). Geographic definitions specific to each outlying area are shown in appendix A of the text in the data products for each area.

## **PLACE**

Places, for the reporting of decennial census data, include census designated places and incorporated places. Each place is assigned a four-digit census code that is unique within State. Each place is also assigned a five-digit FIPS code that is unique within State. Both the census and FIPS codes are assigned based on alphabetical order within State. Consolidated cities (see below) are assigned a one-character alphabetical census code that is unique nationwide and a five-digit FIPS code that is unique within State.

### **Census Designated Place (CDP)**

Census designated places (CDP's) are delineated for the decennial census as the statistical counterparts of incorporated places. CDP's comprise densely settled concentrations of population that are identifiable by name, but are not legally incorporated places. Their boundaries, which usually coincide with visible features or the boundary of an adjacent incorporated place, have no legal status, nor do these places have officials elected to serve traditional municipal functions. CDP boundaries may change with changes in the settlement pattern; a CDP with the same name as in previous censuses does not necessarily have the same boundaries.

Beginning with the 1950 census, the Census Bureau, in cooperation with State agencies and local census statistical areas committees, has identified and delineated boundaries for CDP's. In the 1990 census, the name of each such place is followed by "CDP." In the 1980 census, "(CDP)" was used; in 1970, 1960, and 1950 censuses, these places were identified by "(U)," meaning "unincorporated place."

To qualify as a CDP for the 1990 census, an unincorporated community must have met the following criteria:

1. In all States except Alaska and Hawaii, the Census Bureau uses three population size criteria to designate a CDP. These criteria are:
  - a. 1,000 or more persons if outside the boundaries of an urbanized area (UA) delineated for the 1980 census or a subsequent special census.
  - b. 2,500 or more persons if inside the boundaries of a UA delineated for the 1980 census or a subsequent special census.
  - c. 250 or more persons if outside the boundaries of a UA delineated for the 1980 census or a subsequent special census, and within the official boundaries of an American Indian reservation recognized for the 1990 census.
2. In Alaska, 25 or more persons if outside a UA, and 2,500 or more persons if inside a UA delineated for the 1980 census or a subsequent special census.
3. In Hawaii, 300 or more persons, regardless of whether the community is inside or outside a UA.

For the 1990 census, CDP's qualified on the basis of the population counts prepared for the 1990 Postcensus Local Review Program. Because these counts were subject to change, a few CDP's may have final population counts lower than the minimums shown above.

Hawaii is the only State with no incorporated places recognized by the Bureau of the Census. All places shown for Hawaii in the data products are CDP's. By agreement with the State of Hawaii, the Census Bureau does not show data separately for the city of Honolulu, which is coextensive with Honolulu County.

### **Consolidated City**

A consolidated government is a unit of local government for which the functions of an incorporated place and its county or minor civil division (MCD) have merged. The legal aspects of this action may result in both the primary incorporated place and the county or MCD continuing to exist as legal entities, even though the county or MCD performs few or no governmental functions and has few or no elected officials. Where this occurs, and where one or more other incorporated places in the county or MCD

continue to function as separate governments, even though they have been included in the consolidated government, the primary incorporated place is referred to as a "consolidated city."

The data presentation for consolidated cities varies depending upon the geographic presentation. In hierarchical presentations, consolidated cities are not shown. The presentations include the semi-independent places and the "consolidated city (remainder)." Where the consolidated city is coextensive with a county or county subdivision, the data shown for those areas in hierarchical presentations are equivalent to those for the consolidated government.

For inventory geographic presentations, the consolidated city appears at the end of the listing of places. The data for the consolidated city include places that are part of the consolidated city. The "consolidated city (remainder)" is the portion of the consolidated government mirroring the semi-independent places, and is shown in alphabetical sequence with other places.

In summary presentations by size of place, the consolidated city is not included. The places semi-independent consolidated cities are categorized by their size, as is the "consolidated city (remainder)."

Each consolidated city is assigned a one-character alphabetic census code. Each consolidated city also is assigned a five-digit FIPS code that is unique within the State. The semi-independent places and the "consolidated city (remainder)" are assigned a four-digit census code and five-digit FIPS place code that are unique within the State. Both the census and FIPS codes are assigned based on alphabetical order within the State.

### **Incorporated Place**

Incorporated places recognized in 1990 census data products are those reported to the Census Bureau as legally in existence on January 1, 1990 under the laws of their respective States as cities, boroughs, towns, and villages, with the following exceptions: the towns in the New England States, New York, and Wisconsin, and the boroughs in New York are recognized as minor civil divisions for census purposes; the boroughs in Alaska are county equivalents.

### **POPULATION OR HOUSING UNIT DENSITY**

Population or housing unit density is computed by dividing the total population or housing units of a geographic unit (for example, United States, State, county, place) by its land area measured in square kilometers or square miles. Density is expressed as both "persons (or housing units) per square kilometer" and "persons (or housing units) per square mile" of land area in 1990 census printed reports.

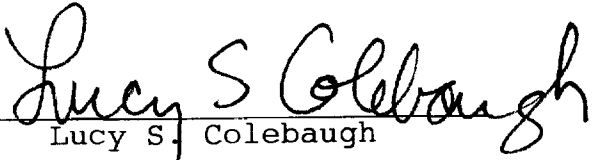
**CERTIFICATE OF SERVICE**

I, Lucy S. Colebaugh, do hereby certify that on this 18th day of January, 1994, I have caused to be sent by first-class United States mail, postage prepaid, copies of the foregoing "Comments of Richard W. Myers" to the following:

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